

contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of the Report and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### §73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Channel 264C2 at Kihei.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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**BILLING CODE 6712–01–P**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 90

[WT Docket No. 02–55; DA 09–442]

#### Public Safety and Homeland Security Bureau Establishes Post-Reconfiguration 800 MHz Band Plan for the U.S.-Canada Border Regions

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Federal Communications Commission’s Public Safety and Homeland Security Bureau (PSHSB or Bureau), on delegated authority, addresses a petition for reconsideration of the reconfigured 800 MHz band plan established for the U.S.-Canada border in the Second Report and Order and, on its own motion, clarifies and corrects certain rules established in the Second Report and Order.

**DATES:** Effective July 6, 2009.

**ADDRESSES:** Federal Communications Commission, 445–12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Brian Marengo, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–0838.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Fourth Memorandum Opinion and Order, DA 09–442, released on February 25, 2009. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission’s Web site at <http://www.fcc.gov>.

1. In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823, November 22, 2004. However, the Commission deferred consideration of band reconfiguration plans for the border areas, noting that “implementing the band plan in areas of the United States bordering Mexico and Canada will require modifications to international agreements for use of the 800 MHz band in the border areas.” The Commission stated that “the details of the border plans will be determined in our ongoing discussions with the Mexican and Canadian governments.”

2. In a Second Memorandum Opinion and Order, adopted in May 2007, the Commission delegated authority to PSHSB to propose and adopt border area band plans once agreements are reached with Canada and Mexico, 72 FR 39756, July 20, 2007.

3. In July 2007, the U.S. and Canada reached an agreement on a process that will enable the U.S. to proceed with band reconfiguration in the border region. Consequently, on November 1, 2007, PSHSB issued a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on specific proposals for reconfiguring the eight U.S.-Canada border regions, 72 FR 63869, November 13, 2007. The Commission received ten comments and eight reply comments in response to the FNPRM.

4. On May 9, 2008, PSHSB issued a Second Report and Order (Second R&O) establishing reconfigured band plans in the U.S.-Canada border regions, 73 FR 33728, June 13, 2008. The band plans adopted in the Second R&O are

designed to separate—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the band.

5. On July 14, 2008, Sprint filed a Petition for Clarification seeking reconsideration of certain portions of the 800 MHz Second R&O.

6. Consequently, on February 25, 2009, PSHSB issued a Fourth Memorandum Opinion and Order (Fourth MO&O) addressing Sprint’s petition. In this Fourth MO&O, PSHSB also clarifies and corrects certain rules established in the 800 MHz Second R&O.

#### Procedural Matters

##### A. Final Regulatory Flexibility Certification

7. A Final Regulatory Flexibility Certification required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix A of the Fourth MO&O.

##### B. Final Paperwork Reduction Act of 1995 Analysis

8. The Fourth MO&O does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

##### Final Regulatory Flexibility Certification

9. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.” The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). In sum, we certify that the rule changes and actions in the Fourth MO&O will have no significant economic impact on a substantial number of small entities.

10. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM in WT Docket 02–55, 72 FR 63869, November 13, 2007. In the FNPRM, the PSHSB sought written public comment on proposals to reconfigure the 800 MHz band along the U.S.-Canada border, including comment on the IRFA. Based upon the comments in response to the FNPRM, PSHSB established a new band plan for the 800 MHz band along the U.S.-Canada border in the Second R&O and included a Final Regulatory Flexibility Analysis (“FRFA”) in that order, 73 FR 33728, June 13, 2008.

11. The Fourth MO&O clarifies portions of the Second R&O and addresses a petition for reconsideration of the Second R&O filed by Sprint Nextel Corporation (Sprint). Interested parties were afforded notice and opportunity to comment on the petition for reconsideration. See 73 FR 43753 and 73 FR 45103.

12. *Border Area Region 3 Band Plan.* In its petition, Sprint states that the “allocation” of eight public safety pool channels above 815.75/860.75 MHz in Region 3 (Ohio/Michigan) along the U.S.-Canada border is both unnecessary and needlessly complicating for rebanding. In this proceeding, the Bureau had adopted a band plan for Region 3 which included over 300 channels for public safety in the lower portion of the band and an additional eight channels for public safety in the upper portion of the band immediately above 815.75/860.75 MHz. Sprint avers that the Bureau created enough spectrum “slots” to accommodate all existing public safety entities in the bottom of the band in this region. Consequently, Sprint seeks clarification that the Bureau intended to assign the eight channels above 815.75/860.75 MHz to the public safety pool, if, and only if, those channels are necessary for retuning public safety licensees that cannot be accommodated at the lowermost portion of the band. The State of Michigan (Michigan) opposes Sprint’s proposal to modify the Region 3 band plan. Michigan notes that the Bureau’s decision to provide a small allocation of non-NPSAC public safety channels above 815.75/860.75 MHz was in direct response to comments from public safety entities who advised the Bureau that these additional channels were needed to maintain post-rebanding spectrum comparability. For instance, Michigan notes that any attempt to accommodate non-NPSAC licensees in the 806–809 MHz/851–854 MHz portion of the band could seriously jeopardize the “smooth” migration of the NPSAC licensees to this portion of the band.

13. The Bureau agrees with Michigan on this issue and, in the Fourth MO&O, declines to make the change to the Region 3 band plan proposed by Sprint. The Bureau indicates that the eight 25 kHz spaced channels above 815.75/860.75 MHz will be needed to accommodate non-NPSAC public safety licensees relocating from the new NPSAC band (806–809/851–854 MHz). Without these channels, the Bureau is concerned that additional non-NPSAC public safety licensees will be forced to remain in the new NPSAC band further complicating the relocation of NPSAC licensees to this portion of the band. Since the Bureau is electing to make no change to the Region 3 band plan, we certify that our decision here will have no significant economic impact on a substantial number of small entities.

14. *Requests for Planning Funding.* In its petition, Sprint seeks clarification that the Bureau did not intend to change the existing process for the submitting and handling of Requests for Planning Funding (RFPF) when the Bureau created its timeline for planning, negotiation and mediation for licensees along the U.S.-Canada border to complete planning. Sprint notes that pursuant to the current policies established by the 800 MHz Transition Administrator (TA), licensees are to submit RFPFs first to the TA and then, once they are deemed acceptable for processing, to Sprint. Consequently, in the Fourth MO&O, the Bureau clarifies that it had no intention of modifying the TA’s policy for submission and handling of RFPFs and specifies that border area licensees who intend to seek planning funding should first submit RFPFs to the TA for approval before submitting them to Sprint in accordance with the TA policy. Because the Bureau is making no change to the TA’s existing policy, we certify that this clarification will have no significant impact on a substantial number of small entities.

15. *Clarifications and Corrections to Section 90.619(c).* In the Second R&O, the Bureau updated Section 90.619(c) to reflect the new 800 MHz band plan along the U.S.-Canada border. In the Fourth MO&O, the Bureau makes certain clarifications and corrections to Section 90.619(c). Specifically, in Table C3 of Section 90.619(c), the Bureau corrects the range for certain assumed average terrain elevation levels along the U.S.-Canada border. The Bureau also modifies Table C5 of Section 90.619(c) to clarify that licensees operating within 30 kilometers of certain cities along the U.S.-Canada border are exempt from sharing primary spectrum with Canada but subject to the power and antenna

height limits which apply to all licensees operating along the border. Furthermore, the Bureau corrects a typo in Table C7 of Section 90.619(c) which lists channels available for licensing in the General Category along the U.S.-Canada border. We certify that none of these clarifications or corrections will have a significant impact on a substantial number of small entities.

#### C. Report to Congress

16. The Commission will send a copy of the Fourth MO&O, including the Final Regulatory Flexibility Certification, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### Ordering Clauses

17. Accordingly, *it is ordered*, pursuant to sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, this Fourth Memorandum Opinion and Order *is adopted*.

18. *It is further ordered* that the amendments of the Commission’s rules set forth in the rule changes *are adopted*, effective July 6, 2009.

19. *It is further ordered* that the Final Regulatory Flexibility Certification required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, and as set forth in Appendix A herein *is adopted*.

20. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fourth Memorandum Opinion and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

David Furth,

Acting Chief, Public Safety and Homeland Security Bureau.

#### Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

#### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of

1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. In Section 90.619, Table C3 in paragraph (c)(2), Table C5 of paragraph

(c)(5) and the introductory text, Table C7 of paragraph (c)(7), and paragraph (c)(11) introductory text are revised to read as follows:

**§ 90.619 Operations within the U.S./Mexico and U.S./Canada border areas.**

\* \* \* \* \*  
(c) \* \* \*  
(2) \* \* \*

**TABLE C3—ASSUMED AVERAGE TERRAIN ELEVATION (AATE) ALONG THE U.S.-CANADA BORDER**

Longitude ( $\Phi$ ) (° West)	Latitude ( $\Omega$ ) (° North)	Assumed average terrain elevation			
		United States		Canada	
		Feet	Metres	Feet	Metres
65 ≤ $\Phi$ < 69	$\Omega$ < 45	0	0	0	0
"	45 ≤ $\Omega$ < 46	300	91	300	91
"	$\Omega$ ≥ 46	1000	305	1000	305
69 ≤ $\Phi$ < 73	All	2000	609	1000	305
73 ≤ $\Phi$ < 74	"	500	152	500	152
74 ≤ $\Phi$ < 78	"	250	76	250	76
78 ≤ $\Phi$ < 80	$\Omega$ < 43	250	76	250	76
"	$\Omega$ ≥ 43	500	152	500	152
80 ≤ $\Phi$ < 90	All	600	183	600	183
90 ≤ $\Phi$ < 98	"	1000	305	1000	305
98 ≤ $\Phi$ < 102	"	1500	457	1500	457
102 ≤ $\Phi$ < 108	"	2500	762	2500	762
108 ≤ $\Phi$ < 111	"	3500	1066	3500	1066
111 ≤ $\Phi$ < 113	"	4000	1219	3500	1066
113 ≤ $\Phi$ < 114	"	5000	1524	4000	1219
114 ≤ $\Phi$ < 121.5	"	3000	914	3000	914
121.5 ≤ $\Phi$ < 127	"	0	0	0	0
$\Phi$ ≥ 127	54 ≤ $\Omega$ < 56	0	0	0	0
"	56 ≤ $\Omega$ < 58	500	152	1500	457
"	58 ≤ $\Omega$ < 60	0	0	2000	609
"	60 ≤ $\Omega$ < 62	4000	1219	2500	762
"	62 ≤ $\Omega$ < 64	1600	488	1600	488
"	64 ≤ $\Omega$ < 66	1000	305	2000	609
"	66 ≤ $\Omega$ < 68	750	228	750	228
"	68 ≤ $\Omega$ < 69.5	1500	457	500	152
"	$\Omega$ ≥ 69.5	0	0	0	0

\* \* \* \* \*  
(5) Stations authorized to operate within 30 kilometers of the center city

coordinates listed in Table C5 may operate according to the band plan for

Canadian Border Regions 7A and 7B as indicated below.

**TABLE C5—CITIES THAT ARE CONSIDERED TO FALL WITHIN CANDIAN BORDER REGION 7**

Location	Coordinates		Canadian border region
	Latitude	Longitude	
Akron, Ohio	41°05'00.2" N	81°30'39.4" W	7A
Youngstown, Ohio	41°05'57.2" N	80°39'01.3" W	7A
Syracuse, New York	43°03'04.2" N	76°09'12.7" W	7B

\* \* \* \* \* (7) \* \* \*

**TABLE C7—GENERAL CATEGORY 806–821/851–866 MHz BAND CHANNELS IN THE CANADA BORDER REGIONS**

Canada border region	General category channels where 800 MHz high density cellular systems are prohibited	General category channels where 800 MHz high density cellular systems are permitted
Regions 1, 4, 5 and 6	261–560	561–710
Region 2	231–620	621–710
Region 3	321–500	509–710
Regions 7A and 8	231–260, 511–550	None
Region 7B	511–550	None

\* \* \* \* \*

(11) In Canada Border Regions 1, 2, 3, 4, 5 and 6, the following General Category channels are available for licensing to all entities except as described below in paragraphs (c)(11)(i) and (c)(11)(ii): in Regions 1, 4, 5 and 6, channels 261–560; in Region 2, channels 231–620 and in Region 3, channels 321–500.

\* \* \* \* \*

[FR Doc. E9–10324 Filed 5–4–09; 8:45 am]

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## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 537 and 552

[GSAR Amendment 2009–03; GSAR Case 2008–G510 (Change 29) Docket 2008–0007; Sequence 4]

RIN 3090–A154

### General Services Administration Acquisition Regulation; GSAR Case 2008–G510; Rewrite of GSAR Part 537, Service Contracting

**AGENCIES:** General Services Administration (GSA), Office of the Chief Acquisition Officer.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by revising the text addressing service contracting. This rule is a result of the General Services Administration Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR), and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

**DATES:** *Effective Date:* June 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Michael O. Jackson, Procurement Analyst, at (202) 208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2009–03, GSAR case 2008–G510 (Change 29).

**SUPPLEMENTARY INFORMATION:**

### A. Background

An Advance Notice of Proposed Rulemaking (ANPR) with request for comments on all parts of the GSAM was published in the **Federal Register** at 71 FR 7910 on February 15, 2006. No comments were received on Part 537. However, internal review comments have been incorporated as appropriate. A proposed rule for the regulatory portion of the GSAM was published in the **Federal Register** at 73 FR 32276 on June 6, 2008. In addition, GSA Acquisition Letter V–05–11, entitled, “Exclusion of Leases or Leasehold Interest in Real Property from the Use of Performance-Based Contracting,” dated June 6, 2005, was incorporated into Subpart 537.102–70. The public comment period for the proposed rule on GSAR Part 537 closed on August 5, 2008, and four (4) comments were received from one (1) commenter.

#### The Rewrite of Part 537

This final rule contains the revisions made to GSAR Subpart 537, Service Contracting. The rule revises GSAR Subpart 537 to address the text at GSAR 537.101, Definitions; GSAR 537.110 Solicitation provisions and contract clauses; provision GSAR 552.237–70, Qualifications of Offerors; and clause GSAR 552.237–73, Restriction on Disclosure of Information. The language in GSAR 537.101, Definitions, is removed from inclusion in the GSAR. This language clarifies the definition for “contracts for building services” for contracting officers; therefore, this language is being incorporated as non-regulatory GSAM language. In addition, because these definitions may have impact beyond the agency, GSAM 537.201, Definitions, is being made regulatory with deletions in the definitions where the GSAM language was redundant with the FAR. GSAR clauses 552.237–71, Qualifications of Employees and 552.237–72, Prohibition Regarding “Quasi-Military Armed Forces” are retained with no changes, except minor edits to correct clause prescription references.

GSAR 537.102–70 was written to incorporate the policy that GSA contracting activities are not required to use performance-based acquisition (PBA) methods for leases and leasehold interests in real property from GSA Acquisition Letter V–05–11, dated June 6, 2005.

#### Discussion of Comments

A proposed rule was published in the **Federal Register** at 73 FR 32276 on June 6, 2008. The comment period closed August 5, 2008, and four (4) comments were received from one (1) commenter. Also, GSA Acquisition Letter V–05–11,

published on June 6, 2005, was incorporated in the final rule.

*Comment 1:* One commenter responded that GSAM 552.237–70 clause is misleading in that it refers to “qualifications” within the same context that it discusses determinations of “responsibility” which the commenter believes are two totally different requirements with separate applications and procedures. The commenter believes this clause is inappropriate for the reasons cited below.

- The issues of “financial resources” and “performance capability” both fall under FAR 9.1’s responsibility standards. Conversely, “qualifications” go to the “quality” of the service that must “be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience” and references FAR 15.304(c)(2) and FAR 15.202(a). Consequently, factors dealing with “comparable contracts,” “experience,” and “competency in performing comparable...contracts” fall under the realm of quality or qualifications as outlined in FAR 15 rather than FAR 9.1 responsibility standards. Qualifications must be “evaluated” as part of the technical factors, and related standards/criteria that are outlined in the RFP/solicitation.

- Since “qualifications” must be specifically addressed in the RFP, as required under FAR 15.3’s Source Selection procedures, and responsibility standards are already addressed in FAR 9.1, the commenter recommends GSA delete this clause on the basis that it is inappropriate, ambiguous, impractical, and unnecessary.

- If the clause is retained, the commenter questions its applicability only to building service contracts. The commenter’s position is that qualifications and responsibility matters could apply to all contracts including supply, construction, A–E, as well as all professional services. If retained, the commenter recommends that GSA consider moving the clause under GSAM 509.2 to align with FAR 9.2’s “Qualifications Requirements.”

*Response:* Nonconcur. The information summarizes the requirements for the performance of building service contracts that is not found in other parts of the FAR and GSAM. The GSA position is that the FAR and GSAM coverage is adequate for responsibility and qualifications matters.